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455 CMR 2.00: Minimum Wage

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2.01: Definitions

Bona Fide Educational Institution: An educational institution that has received accreditation from a recognized source. For purposes of 455 CMR 2.00, a newly established institution may be recognized by the Director as a *bona fide* educational institution provided it has applied for accreditation.

Director: The Director of the Department of Labor and Workforce Development

Employer: An individual, corporation, partnership or other entity, including any agent thereof, that engages the services of an employee or employees for wages, remuneration or other compensation.

Learner or Apprentice: A person enrolled in a vocational or technical course of instruction whether directly leading to a bachelor's degree or not, in a *bona fide* educational institution.

Minor: A person under 18 years of age.

Regular Hourly Rate: The amount that an employee is regularly paid for each hour of work. When an employee, other than an employee exempt from overtime under M.G.L. c. 151, §1A, is paid on a piece work basis, salary, or any basis other than an hourly rate, the regularly hourly rate shall be determined by dividing the total hours worked during the week into the employee's total weekly earnings. Regardless of the basis used, whether time rate, commission basis or piece rate, an employee shall be paid not less than the applicable minimum wage each week. The regular hourly rate shall include all remuneration for employment paid to, or on behalf of, the employee, but shall not include:

- (a) sums paid as commissions, drawing accounts, bonuses, or other incentive pay based on sales or production; or
- (b) sums excluded under 29 U.S.C. §207(e).

Tipped Employee: An employee who receives gratuities of more than \$20 a month.

Uniform: All special wearing apparel which is worn by an employee as a condition of employment. It shall be presumed that a uniform worn by an employee of any establishment is worn as a condition of employment if the uniform is of similar design, color, or material, or it forms part of the decorative pattern of the establishment to distinguish a person as an employee of the place of work. Where an employer requires a general type of basic street clothing, permits variation in details of dress, and the employee chooses the specific type and style of clothing, this clothing shall not be considered a uniform.

Working Time: Includes all time during which an employee is required to be on the employer's premises or to be on duty, or to be at the prescribed work site, and any time worked before or beyond the end of the normal shift to complete the work. Working time does not include meal times during which an employee is relieved of all work-related duties.

2.02: Basic Minimum Wage and Overtime Rates

- (1) Basic Minimum Wage. The minimum wage rate in effect under M.G.L. c. 151, § 1 to be paid to an employee in an occupation as defined in M.G.L. c. 151, § 2.
- (2) Service Rate. The minimum wage rate for a tipped employee may be comprised of both:
 - (a) the service rate paid by the employer; and
 - (b) tips actually received and retained by the employee. The sum of the service rate and the tips received by the employee must equal or exceed the basic minimum wage. The service rate shall be not less than \$2.63 per hour. An employer may pay the service rate to the employee only if:
 - 1. the employer has informed such employee of the provisions of the third paragraph of M.G.L. c. 151, § 7;
 - 2. the employee actually received tips in an amount which, when added to the service rate, equals or exceeds the basic minimum wage; and
 - 3. all tips received by the employee were either retained by him or her or were distributed to him or her through a tip-pooling arrangement. If the employee is engaged in the serving of food or beverages, such a tip-pooling arrangement must conform with the requirements of M.G.L. c. 149, § 152A. Unless all three of the foregoing requirements are met, the employer must pay a tipped employee the full basic minimum wage rate. The minimum wage for an employee receiving \$20 or less per month in tips shall be the basic minimum wage.
- (3) Overtime Rate. One and one half times an employee's regular hourly rate, such regular hourly rate not to be less than the basic minimum wage, for work in excess of 40 hours

in a work week, except as set forth in M.G.L. c. 151, §1A. The terms “bona fide executive, or administrative or professional person” in M.G.L. c. 151, §1A(3), shall have the same meaning as set forth in Part 541 of Title 29 of the U.S. Code of Federal Regulations.

The overtime rate for a tipped employee receiving the service rate shall be computed at one and one half times the basic minimum wage, except where exempted by M.G.L. c. 151, §1A.

2.03: Hours Worked

- (1) Reporting Pay. When an employee who is scheduled to work three or more hours reports for duty at the time set by the employer, and that employee is not provided with the expected hours of work, the employee shall be paid for at least three hours on such day at no less than the basic minimum wage. This provision shall not apply to organizations granted status as charitable organizations under the Internal Revenue Code.
- (2) On-Call Time. An on-call employee who is not required to be at the work site, and who is effectively free to use his or her time for his or her own purposes, is not working while on call.
- (3) Sleeping Time and Working Shifts.
 - (a) An employee required to be on duty at the work site for less than 24 hours is working even if the employee is permitted to sleep or engage in other personal activities when not busy.
 - (b) Where an employee is required to be on duty at the worksite for 24 hours or more, the employer and employee may agree prior to performance of the work to exclude *bona fide* meal periods and a *bona fide* regularly scheduled sleeping period of not more than eight hours from working time, provided the employer provides adequate sleeping quarters and the employee can usually enjoy an uninterrupted night’s sleep. If no prior agreement is made, sleeping time and meal time will constitute working time. If the sleeping period is interrupted by a call to duty, all such time on duty must be counted as working time. If the sleeping period is interrupted to such an extent that the employee cannot get a reasonable night’s sleep, the entire period must be counted as working time.
 - (c) If an employee resides on an employer’s premises on a permanent basis or for extended periods of time, not all time spent on the premises is considered working time. The employer and the employee may make any reasonable agreement as to hours worked which takes into consideration all of the pertinent facts.

(4) Travel Time.

(a) Ordinary travel between home and work is not compensable working time. However, if an employee who regularly works at a fixed location is required, for the convenience of the employer, to report to a location other than his or her regular work site, the employee shall be compensated for all travel time in excess of his or her ordinary travel time between home and work with allowance for associated transportation expenses.

(b) An employee required or directed to travel from one place to another after the beginning of or before the close of the work day shall be compensated for all travel time and shall be reimbursed for all transportation expenses.

(c) Travel that keeps an employee away from home overnight shall be compensated for in a manner consistent with 29 C.F.R. §785.39.

2.04: Wage Payments and Deductions From Wages

(1) Deductions from Basic Minimum Wage. No deduction, other than those required by law and those allowed for lodging and meals listed in 455 CMR 2.04(1)(a) and (b) of this section, shall be made from the basic minimum wage.

(a) Deductions for Lodging. An employer, including an employer of seasonal and temporary help, may deduct from the basic minimum wage of an employee a sum per week as set forth in 455 CMR 2.04(1)(a)1. through 3. when adequate, decent and sanitary lodging, including heat, potable water, and light are furnished. A deduction for lodging is not permitted unless the room is actually used by the employee and unless said employee desires said room. Deductions shall not exceed the following rates.

1. A sum not exceeding \$35.00 per week for a room occupied by one person.

2. A sum not exceeding \$30.00 per week for a room occupied by two persons.

3. A sum not exceeding \$25.00 per week for a room occupied by three or more persons.

(b) Deductions for Meals. No employer shall deduct from the basic minimum wage of an employee a sum in excess of the amounts per day hereafter set forth for meals actually furnished to the employee. The maximum deduction for meals per day shall be as follows: Breakfast, \$1.50, Lunch, \$2.25; Dinner, \$2.25. No deduction for meals may exceed the actual cost to the employer.

1. No such deduction for meals shall be made without the written consent of the employee.

2. A deduction for one meal may be made from the basic minimum wage of an

employee working three hours or more.

3. A deduction for two meals may be made from the basic minimum wage of an employee whose work entirely covers two meal periods, or eight hours of work.

4. A deduction for three meals may be made from the basic minimum wage of an employee if lodging is provided, or if special permission is granted by the Director.

(2) Deductions for Uniforms. For employers requiring uniforms, the following shall apply:

(a) Where uniforms require dry-cleaning, commercial laundering, or other special treatment, the employee shall be reimbursed for the actual costs of such service to the extent that these costs reduce the employee's hourly rate below the basic minimum wage. Where uniforms are made of "wash and wear" materials, that do not require special treatment, and that are routinely washed and dried with other personal garments, the employer need not reimburse the employee for uniform maintenance costs.

(b) No deposit shall be required by the employer from an employee for a uniform or for any other purpose, except by permission of the Director.

(3) Deductions and the Calculation of Overtime. Where deductions are made from an employee's wages for meals, lodging, or uniforms, the employee's regular hourly rate used to calculate overtime compensation shall be the employee's hourly rate before any deductions are made.

(4) Student Housing/Childcare Exchanges. Notwithstanding any provision of 455 CMR 2.00 to the contrary, an employer may provide lodging and meals in the employer's home to an employee who is a full-time student at a *bona fide* educational institution of higher learning in exchange for household services, provided that such household services do not exceed 18 hours of working time per week in exchange for occupancy of a single room.

2.05: Employer Licenses

(1) Student Workers.

(a) The Director may issue to any hospital or laboratory a license permitting payment of not less than 80% of the basic minimum wage to students whose employment for wages is part of a formal training program for such period of time as shall be fixed by the Director and stated in the license.

(b) The Director may issue to any school, college, university, or a *bona fide* educational institution, a license permitting payment of not less than 80% of the basic minimum wage, to students enrolled in and employed by said institutions for such period of time as shall be fixed by the Director and stated in the license.

(c) The Director may issue to any summer camp a license permitting payment of not less than 80% of the basic minimum wage to students employed as camp counselors or counselor trainees for such period of time as shall be fixed by the Director and stated in the license. An employee shall be considered a camp counselor or counselor trainee if the employee is directly involved in camp programming and camper supervision.

(d) The Director may issue to any establishment which has been granted non-profit status under the Internal Revenue Code a license permitting payment of not less than 80% of the basic minimum wage to minors attending secondary school who work part-time in hospital wards, school and college dining rooms and dormitories, where the ratio of one minor to five adult persons working in these areas is maintained, for such period of time as shall be fixed by the Director and stated in the license.

(e) The Director may issue, to the employer of a learner or apprentice who is employed either on a full or a part-time basis, a license permitting payment of not less than 80% of the basic minimum wage for such period of time as shall be fixed by the Director and stated in the license.

- (2) Disabled Workers. No person whose earning capacity has been impaired may be paid less than the basic minimum wage unless and until a special certificate in accordance with the provisions of M.G.L. c. 151, § 9, has been obtained by the employer from the Director.

2.06: Notice and Recordkeeping

- (1) Workplace Notice. Every employer shall post, in a place conspicuous to employees, a workplace notice issued by the commonwealth containing the basic minimum wage rates and such other provisions of M.G.L. c. 151 and 455 CMR 2.00 as the Director may require.
- (2) Records. Every employer shall keep a true and accurate record of the name, complete address, social security number, and occupation of each employee, of the amount paid each pay period to each employee, the hours worked each day, the dates on which each employee worked each week, and such other information as the Director or the Attorney General in their discretion shall deem material and necessary. Such records shall be kept on file for at least two years after the entry date of the record. Such records shall be maintained at the place of employment, at an office of the employer, or with a bank, accountant or other central location within the commonwealth.

All such records must be kept and furnished to the Director or Attorney General upon demand, in accordance with M.G.L. c. 151, §3, 15 and 19(3). The term transcript, as used in these sections, shall include photocopies, printouts of electronic information and any reproduction of records, entries, or documents.

- (3) Recording of Working Time. An employer may round an employee's starting and stopping time to the nearest five minutes, one-tenth, or quarter of an hour provided that this manner

of computing working time averages out over a reasonable period of time so that an employee is fully compensated for all the time he or she actually worked.

2.07: Penalties for Violations

Violation of any provision of 455 CMR 2.00 shall be subject to the penalties provided in M.G.L. c. 151.

2.08: Severability

If any provision of 455 CMR 2.00 shall be held inconsistent with M.G.L. c. 151, or held unconstitutional, either on its face or as applied, the inconsistency or unconstitutionality shall not affect the remaining provisions of 455 CMR 2.00.

REGULATORY AUTHORITY

455 CMR 2.00: M.G.L. c. 151.